

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 3**

**ARDENT MILLS, LLC**

**Employer**

**and**

**Case 03-RD-256936**

**TIMOTHY NASH**

**Petitioner**

**and**

**BAKERY CONFECTIONARY TOBACCO  
WORKERS AND GRAIN MILLERS, LOCAL 53**

**Union**

**DECISION AND DIRECTION OF ELECTION**

A hearing was held in this matter before a hearing officer of the National Labor Relations Board on March 9, 2020. At this hearing, Ardent Mills, LLC (the Employer), Timothy Nash (the Petitioner), and Bakery Confectionary Tobacco Workers and Grain Millers, Local 53 (the Union) executed stipulations resolving all issues except two: the proper date on which to hold the election and the Union's contention that the petition should be dismissed inasmuch as the Union claims that the Petitioner listed an inappropriate unit on the originally filed petition. I address the latter contention first.

It is well established that, in decertification cases, the unit in which an election is to be held must be coextensive with the certified or recognized unit. See, e.g., *Campbell Soup Co.*, 111 NLRB 234 (1955); *Bell & Howell Airline Service Co.*, 185 NLRB 67 (1970); and *Mo's West*, 283 NLRB 130 (1989). The Union contends that the petition erroneously includes laboratory employees in the petitioned-for bargaining unit. The Petitioner submitted a handwritten decertification petition in which the handwritten words "laboratory employees" is written in the space dedicated for "Included" employees. However, a full review of this section demonstrates that the Petitioner drew an arrow from the pre-written "Excluded" section directly to the "laboratory employees." Thus, it is not clear that the Petitioner intended to include the laboratory employees in the petitioned-for unit. In any event, the Petitioner clarified during the hearing, and all parties agree, that laboratory employees are excluded from the petitioned-for unit.

Under these circumstances, I cannot conclude that dismissal of the petition is the proper course of action. Doing so would be tantamount to relying on the type of "senseless technicality" that the Board strives to avoid in representation proceedings. See *NLRB v. Superior Cable Corp.*,

246 F.2d 539 (4th Cir. 1957).<sup>1</sup> As the Board stated in *Advance Pattern Co.*, 80 NLRB 29, 35 (1948), it is opposed to "produ[ing]...the atmosphere of a tensely litigated law suit in which all sides will be quick to seize upon technical defects in pleadings to gain substantive victories." In my view, dismissing the petition in this case would result in just such an outcome. As such, I reject the Union's argument.

Regarding the other outstanding issue, the date on which the election should occur, it is well established that election arrangements, including the date on which an election should be held, are not litigable matters at a pre-election hearing.

Based on the entire record, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.
2. The Employer is an employer as defined in Section 2(2) of the Act and is engaged in commerce within the meaning of the Act.<sup>2</sup>
3. The Union is a labor organization within the meaning of Section 2(5) of the Act.
4. A question concerning commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees of the Employer constitute a voting unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All production and maintenance employees employed by the Employer at its flour mill located at 101 Normanskill Street, Albany, New York, excluding maintenance foreman, office and clerical workers, laboratory employees, watchman, students in training for supervisory positions, shift supervisors, guards, professional employees and supervisors as defined in the Act.

#### **DIRECTION OF ELECTION**

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. Employees will vote whether or not they wish to

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<sup>1</sup> Although that case dealt with a petitioning union's failure to indicate on its petition that the employer had rejected the union's request for voluntary recognition, the same rationale applies here. In rejecting this argument it was noted that "the demand and refusal...had been established at the hearing itself..." In this case, the same is true; the petition as written arguably excluded laboratory employees and the parties all agreed at the hearing that these employees should be excluded.

<sup>2</sup> The parties stipulated that the Employer is a limited liability corporation with a place of business located at 101 Normanskill Street, Albany, New York, the only facility involved herein, at which the Employer operates a flour and grain milling plant. In the past 12 months, a representative period of time, the Employer purchased and received at its Albany, New York facility goods and materials valued in excess of \$50,000, which goods and materials were shipped directly to the Employer's Albany, New York facility from points located outside the State of New York.

be represented for purposes of collective bargaining by Bakery Confectionary Tobacco Workers and Grain Millers, Local 53.

**A. Election Details**

The election will be held on Friday, March 27, 2020, from 6:30 a.m. – 8:00 a.m. and from 2:15 p.m. – 4:00 p.m. in the break room at the Employer's 101 Normanskill Street, Albany, New York facility.

**B. Voting Eligibility**

Eligible to vote are those in the unit who were employed during the payroll period ending **March 9, 2020**, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off.

Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

**C. Voter List**

As required by Section 102.67(l) of the Board's Rules and Regulations, the Employer must provide the Regional Director and parties named in this decision a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters.

To be timely filed and served, the list must be *received* by the regional director and the parties by **Monday, March 16, 2020**. The list must be accompanied by a certificate of service showing service on all parties. **The Region will no longer serve the voter list.**

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be

used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at [www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015](http://www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015).

When feasible, the list shall be filed electronically with the Region and served electronically on the other parties named in this decision. The list may be electronically filed with the Region by using the E-filing system on the Agency's website at [www.nlr.gov](http://www.nlr.gov). Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions.

Failure to comply with the above requirements will be grounds for setting aside the election whenever proper and timely objections are filed. However, the Employer may not object to the failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure.

No party shall use the voter list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

#### **D. Posting of Notices of Election**

Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of the Notice of Election in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. The Notice must be posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the employees in the unit found appropriate, the Employer must also distribute the Notice of Election electronically to those employees. The Employer must post copies of the Notice at least 3 full working days prior to 12:01 a.m. of the day of the election and copies must remain posted until the end of the election. For purposes of posting, working day means an entire 24-hour period excluding Saturdays, Sundays, and holidays. However, a party shall be estopped from objecting to the nonposting of notices if it is responsible for the nonposting, and likewise shall be estopped from objecting to the nondistribution of notices if it is responsible for the nondistribution. Failure to follow the posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed.

#### **RIGHT TO REQUEST REVIEW**

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 14 days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this decision after the election on the grounds that it did not file a request for review of this Decision prior to the election. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

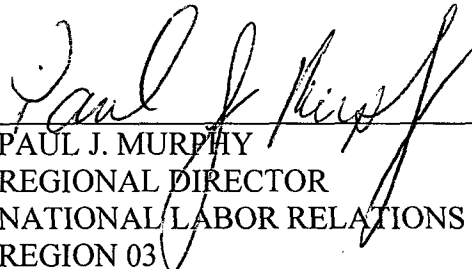
A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to [www.nlr.gov](http://www.nlr.gov), select E-File Documents,

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enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Neither the filing of a request for review nor the Board's granting a request for review will stay the election in this matter unless specifically ordered by the Board.

Dated: March 12, 2020



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PAUL J. MURPHY  
REGIONAL DIRECTOR  
NATIONAL LABOR RELATIONS BOARD  
REGION 03  
130 S Elmwood Ave Ste 630  
Buffalo, NY 14202-2465